IN THE HIGH COURT OF UTTARANCHAL

AT NAINITAL
Writ Petition No. 711 of 2005 (S/S)

1. Nakli Ram
S/o Nihal Singh
R/o Village and Post Bhadshahpur
Tehsil and District – Haridwar … Petitioner

Versus

1. State of Uttaranchal
Through its Additional Registrar
Cooperative Societies, Uttaranchal sitting at camp
Office Dehradun

2. Secretary Haridwar District Cooperating Bank Ltd.
Head Office B.T. Ganj Roorkee,
District – Haridwar

3. Managing Director
Bhadshahpur, Kisan Seva Sahakari Samiti Ltd.
Bhadshahpur,
Tehsil and District – Haridwar

4. Chairman,
Bhadshahpur, Kisan Seva Sahakari Samiti Ltd.
Bhadshahpur,
Tehsil and District – Haridwar ... Respondents

Sri Parikshit Saini learned counsel for the petitioner.
Sri Paresh Tripathi learned Standing Counsel for the respondents.

Hon'ble B.C. Kandpal, J.

By way of this writ petition, the petitioner has sought a direction in the nature of certiorari quashing the order dated 21.05.2005 passed by the respondent no. 3 and 4 (contained in annexure – 1 of the writ petition).

Brief facts giving rise to this writ petition are that the petitioner joined the services as Accountant in Bhadshahpur Kisan Seva Sahakari Samiti Ltd. in the year 1983. The Samiti purchased some land for installation of a diesel pump station for the benefit of the farmers and a sale deed was executed. In the said sale deed the stamp duty paid was not proper, hence

recovery certificate was issued from the Assistant Collector on 04.05.2005 which was served in the office of the respondent nos. 3 and 4 where the petitioner was working as an Accountant.

As the petitioner did not inform the Chairman and the Managing Director of the society with regard to the recovery certificate, hence, the respondent nos. 3 and 4 suspended the petitioner on the ground of dereliction of duty.

Heard learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondent no. 1 and perused the record.

Learned Standing Counsel first of all raised a preliminary objection that the Cooperative Society where the petitioner had been working does not come within the Notification issued by the U.P. Cooperative Institutional Board, hence the suspension order passed against the petitioner is **not** amenable to writ petition because it is neither State nor instrumentality of the State within the meaning of Article 12 of the Constitution.

The record shows that the establishment on which the petitioner was Accountant is the primary society whose area of operation does not extent to more than one District or State and it is admitted to the learned counsel for the parties that it is confined to a part of a District. That being the position, the society is not a cooperative society within the meaning contained in Regulation 2 (ix) and, therefore, the Regulations cannot apply to it and its employees. The petitioner, therefore, cannot maintain the writ petition against the impugned order.

Learned counsel for the petitioner could not point out anything before this court that the society is either State within the meaning of Article 12 of the Constitution of India or is an instrumentality of the Government.

The petitioner cannot get the benefit of Section 120 of the Act because this Section merely empowers the Registrar to lay down the qualification for appointment of the employees of the Cooperative Societies. By laying down the qualification, the Registrar does not become appointing authority of the employees of the Cooperative Society. Society continues to be the appointing authority of its employees and it derives its power to appoint not from Section 120 but from its own non-statutory bye-laws/rules unless it is a society covered by the definition of "Cooperative Society" contained in Regulation 2 (ix).

Accordingly, the writ petition lacks merit and is dismissed in limine.

(B.C. Kandpal, J.)

9th June, 2005
Shiv